

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9411 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMRUT GANGARAM MAHAR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UA TRIVEDI, AGP for Respondent No. 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/12/96

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order of detention dated 06/04/1996.

2. It appears from the grounds of detention that there are about four cases registered against the detenue pending trial under the provisions of Indian Penal Code. So far as the case at srl. no. 2 i.e. Cr.R. No.

108/95 for offences under s. 141, 143, 147, 148, 149 IPC is concerned, the said case will not fall under the provisions of Chapter XVI or XVII of IPC. Thus, there are only three cases. The case No.1 is of the year 1994, whereas the third and fourth cases are of the year 1995. In addition to the said cases, there are statements of three witnesses, who spoke about the activities of the detainee.

3. It is contended that the last case i.e. C.R. No. 223/95 was registered in the month of October 1995 and the order of detention has been passed in the month of April 1996. Thus, the live-link between the prejudicial activities and the purpose of detention is snapped. Learned counsel placed reliance on the decision rendered by the Apex Court reported in AIR 1994 SC 656.

4. No reply to the petition has been filed. However, Mr UA Trivedi, ld. AGP has contested this Special Civil Application. So far as the delay is concerned, it is submitted by the ld. AGP that the statements of the witnesses were recorded in the month of March 1996, in which he has made a reference to certain incidents of January and February 1996 and as such, there is no delay. The sponsoring authority has sent the proposal in the month of March 1996. However, no material explaining delay has been placed on record. In case where contention is raised with respect to delay, it is always appropriate for the detaining authority to file an affidavit in that regard. Be that as it may. It is further argued that simply on the basis of certain cases being registered under the IPC and further that some stereo type statements are recorded, it cannot be said that the activities of the detainee is such which is prejudicial for the maintenance of public order.

5. Provisions of the PESA Act, 1985 are intended to deal with habitual criminals, dangerous and desperate outlaws who are so hardened and incorrigible that the ordinary provisions of the penal laws and the mortal fear of punishment for crime are not sufficient deterrents for them. Section 3 of the PESA Act, 1985 is therefore to be apprehended to be booked under the ordinary law and who have special reasons, cannot be convicted under the penal laws in respect of offences alleged to have been perpetrated by them. The power under the PESA Act 1985 is required to be exercised with restraint and great caution. The apex Court in *Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police & ors.* reported in 1995 (2) GLR 1268 has held that the detaining authority

must be satisfied that the detenu is a dangerous person within the meaning of section 2(c) of the PASA Act, 1985, who habitually commits or attempt to commit or abets the commission of any offence punishable under Chapter XVI or XVII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act as according to sub-section (4) of section 3 of the PASA ACT 1985, it is such 'dangerous person' who for the purpose of section 3 shall be deemed to be a person 'acting in any manner prejudicial to the maintenance of public order' against whom an order of detention may lawfully be made. The expression 'habit' or 'habitually' has not been defined in the Act. It does not refer to the frequency of the occasion but to the invariability of practice and the habit has to be proved by totality of facts. The Apex Court, therefore, held that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that the person is a 'dangerous person' unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. It is further required to be established that besides a person being 'dangerous person' his alleged activities fall within the ambit of the expression 'public order'. A distinction is to be drawn between 'law and order' and 'maintenance of public order.'

6. I have perused the material on record and have also read the statements of the witnesses. The statements of witnesses are of general and stereotype. From the material on record, it appears that the petitioner has been wrongly branded as 'dangerous person'. There is also nothing on record to suggest that the activities of the petitioner may prejudicially affect the maintenance of public order. Thus, in my view, the detention of the petitioner is ex-facie illegal and is not sustainable.

7. In the result, this Special Civil Application is allowed. The impugned order of detention is quashed and set aside. The detenu shall be released forthwith, if is not required in any other case. Rule made absolute accordingly.

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